HARON MUNDIR

v.

SINGAPORE AMATEUR ATHLETIC ASSOCIATION

HIGH COURT, SINGAPORE
GP SELVAM JC
[SUIT NO. 1273 of 1989]
16 SEPTEMBER 1991

ADMINISTRATIVE LAW: *Private law liability vs. public law illegality - Remedies - Entitlement to monetary compensation - Private body - Unincorporated association - Breach of contract - Rules of natural justice implied as a matter of law and public policy - Duty to act fairly - Minimum standards of fair decision - Declaratory remedy.*

UNINCORPORATED ASSOCIATIONS: *Decision of disciplinary committee and management committee suspending member from participating in sports events - Relationship by implied contract - Whether decision null and void - Natural justice- Whether suspension of member was spurred by bad faith - Whether decision was in fact motivated by extraneous considerations - Societies Act (Cap. 311).*

CONTRACT: *Breach of contract - Damages for breach of an implied term to afford a fair hearing - Special damages - General damages for emotional damage, mental anguish, humiliation and reputation - Not awarded in contract - Test of remoteness - Cannot be commuted to tort - Effect of malice - Breach of duty in contract cannot lead to a tort*

CIVIL PROCEDURE: *Whether parties are bound by their pleadings - Whether special damages must be pleaded and proved.*

The plaintiff, an amateur athelete, is a member of a club affiliated to the defendant association. On 19 April 1989 the plaintiff was sent by the defendant to Japan to undergo a 3 months' training course in preparation for the forthcoming SEA Games due in August 1989 to be held in Kuala Lumpur. On arrival in Japan, however, the plaintiff discovered that no training programme had been prepared for him. He was also unable to settle in and adapt to life in Japan. He left Japan several days later and on his return to Singapore he met a Major Lim (his coach), explaining the circumstances of his sudden return. Apparently, however, his early return had angered LLK, the defendants' President who described the plaintiff's conduct as "an international fiasco", affecting adversely the defendants' "good image with the Japanese."

A month later, the plaintiff received a letter signed by one Captain Selvarajah (the secretary of the disciplinary committee) informing him that a disciplinary committee had been constituted to inquire into the plaintiff's premature return. The plaintiff was required to appear "in person to answer to the allegations against him." The plaintiff was assured that he would be given "every opportunity to speak and answer to the allegations against him." He was also required to submit an "exculpatory statement" within 10 days.

On the appointed date, the plaintiff attended the hearing, without legal Counsel or any other person to represent or assist him. When the inquiry commenced, Captain Selvarajah assumed the role of "prosecutor" and led evidence against the plaintiff. The plaintiff was not given any opportunity to cross-examine a prosecution witness, a Mr. Nicholas. At the conclusion of the inquiry, when the committee prepared its report for submission to the management committee, a copy of the report was not extended to the plaintiff.

On 22 June 1989, after the management committee had met and considered the disciplinary committee's report, the plaintiff was suspended from all track and field activities in and outside Singapore for 18 months. The plaintiff now applies to the Court for, *inter alia*, a declaration that the decision of the disciplinary committee accepted at the management committee meeting held on 22 June to suspend the plaintiff was null and void, an injunction restraining the defendants from acting on the decision or excluding or suspending him from participating in any track or field events in or outside Singapore until after the trial of the action, and damages.

Held:

[1] The defendants are not a public body. In its true character it is a private organisation very much like a limited company. The true nature of the plaintiff's cause of action is breach of contract. The contract may be express or implied. In many instances the terms of contract would be ascertained or implied from the constitution or the rules of the association. In this case the contract between the plaintiff and the defendant Association must be implied. It came into being when the plaintiff accepted the defendant's offer to go to Japan for training. The contract was confirmed when the defendants pursuant to their power under r. 13 of their constitution, exercised the disciplinary powers over the plaintiff who submitted to such jurisdiction. The contract may also be implied on the basis that the Flash Athletic Club was the plaintiff's agent.

[2] The present proceedings are neither an appeal nor an application for judicial review. It is an action for breach of contract. The pleadings may not spell out the cause of action for breach of contract in the traditional way. However, they do set out sufficient facts to found an action in contract.

[3] Although the parties are bound by their pleadings, yet the Court is not bound by the pleadings of parties and must proceed upon the evidence which it deems to be most accurate and trustworthy.

[4] The device used by the Courts to determine cases of expulsion or suspension of members in an incorporated association is by the application of the doctrine of natural justice. The rules of natural justice are implied into every contract, express or implied, which contemplates a hearing affecting the rights and livelihood of persons. The rules are so implied as a matter of law and public policy.

[5] The Courts will intervene where it is shown that the suspension was spurred by bad faith. Where the decision was in fact motivated by other extraneous consideration, it would be in bad faith.

[6] The doctrine of natural justice had undergone such a metamorphosis that its meaning depends on the circumstances of the case. Although hallowed by time and much judicial repetition, the phrase "principles of natural justice" has often been misunderstood and therefore often misused. The phrase might now be allowed to find a permanent resting place and be better replaced by speaking of a "duty to act fairly". The latter phrase, however, must also not be misunderstood or misused.

[7] Having regard to the facts of the case and an examination of the decision making process, it is clear that injustice was done to the plaintiff; justice was denied to him because the defendants did not act in good faith. LLK, the defendants' President, had acted with malice and; his animosity against the plaintiff continued even after the plaintiff had obtained the interlocutory injunction from the Court. LLK had treated the Court order with insouciance or perhaps contempt.

[8] Where a decision has been arrived at without adherence to the rules of natural justice or good faith, the private law declaratory remedy is available to condemn the decision. Further, as in any contract case, damages may be awarded for breach of the implied term to afford a fair hearing. Such damages, however, are special damages and must be pleaded and proved.

[9] General damages can be awarded where a decision to expel is declared to be invalid for non-adherence to the rules of fair hearing. However, as a general rule, damages for frustration, injured feeling, mental distress, humiliation and loss of reputation will not be awarded for breach of contract. The basis for refusing general damages in cases such as these is that the test of remoteness in contract is different from tort. A pure breach of contract cannot be converted into a tort in order to recover damages otherwise not recoverable.

[10] With regard to malice, whilst it is certainly a factor to be taken into account in assessing the validity of the decision and the decision making process, contract law does not permit malice to be taken into consideration in awarding damages. It would be otherwise if the claim is founded on tort.

[11] There is a long established rule that an act of an individual which is not in itself unlawful cannot give rise to a cause of action in tort merely because it is motivated by malice. A claim in tort must be founded on a breach of duty recognised by the law of tort. A mere breach of a duty in contract cannot lead to a tort. The malice fact therefore does not afford a ground to award any form of damages in contract or tort.

[Plaintiff's application for declaration and injunction allowed with costs; Special damages of $1,500 awarded.]

Cases referred to:
Baker v. Jones [1954] 2 All ER 553 ***(foll)***
The Geo W. McKnight [1947] 8 LL LR. 419 ***(foll)***
Lee v. The Showmen's Guild of Great Britain [1952] 2 QB 329 ***(foll)***
Lawlor v. Union of Post Office Workers [1965] Ch 712 ***(foll)***
Russell v. Duke of Norfolk [1949] 1 All ER 109 ***(foll)***
Dawkins v. Antrobus [1879] 17 Ch D 615 ***(foll)***
D' Ary v. Adamson [1913] 29 TLR 367 ***(foll)***
Board of Education v. Rice [1911] AC 179 ***(foll)***
Council of Civil Service Unions v. Minister for the Civil Service [1985] AC 374 ***(foll)***
Ladd v. Marshall [1954] 1 All ER 745 ***(foll)***
Bonsor v. Musicians' Union [1956] AC 104 ***(foll)***
Chong Koh Lim & Ors v. Yong Su Hian [1979] 2 MLJ 11 ***(cons)***
Florence Bailes v. Ng Jit Leng [1985] 1 MLJ 374 ***(dist)***
Wren v. Holt [1903] 1 KB 610 ***(cit)***
Godley v. Perry [1960] 1 WLR 9 ***(cit)***
Donoghue v. Stevenson [1932] AC 562 ***(cit)***
Bliss v. South East Thames Regional Health Authority [1987] ICR 701 ***(foll)***
Addis v. Gramophone Co. Ltd. [1909] AC 488 ***(foll)***
Jarvis v. Swan Tours Ltd. [1973] QB 233 ***(cit)***
Jackson v. Horizon Holidays Ltd. [1975] 1 WLR 1468 ***(cit)***
Perry v. Sidney Philips & Sons [1982] 1 WLR 1297 ***(cit)***
Abbott v. Sullivan [1952] 1 KB 189 ***(cit)***
Bradford v. Pickles [1895] AC 597 ***(foll)***
Allen v. Flood [1898] AC 1 ***(foll)***

Other sources referred to:
An Introduction to Administrative Law - Peter Cane at p. 40
Atkins Court Forms, 2nd Edn., Vol. 40 at 136
Constitutional and Administrative Law, 6th Edn., at 557-8

For the plaintiff - Edmond Pereira (David Rasif with him)
For the defendants - Tommy Neo

JUDGMENT

GP Selvam JC:

The Facts

The plaintiff is a well known amateur athlete in Singapore. He has been the undisputed champion in Singapore in the 100, 200 and 400 metre track events. As such he has represented Singapore at international competitions.

The defendants, Singapore Amateur Athletic Association, are vested with the power and responsibility to "promote, arrange and assist amateur athletic competitions and championships for the benefit of affiliates and foreign teams desirous of visiting the Republic of Singapore and to employ the funds of the Association to this purpose and to promote athletics in general". Their constitution confers such power on them. It is a private body fulfilling public functions.

The defendants are registered as a society under the Societies Act (Cap. 311). Organisationally they are an association of several sports clubs. Individual athletes as such cannot be members of the defendants. The Association is run by a management committee. The constitution of the defendants confers on the management committee the power to control and discipline individual athletes and athletic life in Singapore. The relevant provision, r. 13, reads:

Powers Of The Management Committee

(h) To take disciplinary action on the recommendation of the disciplinary sub-committee.

(i) To suspend for a stated period, indefinitely or permanently anyone infringing the Amateur Definition or being guilty of misbehaviour or unfair practices.

The plaintiff at the material time was a member of Flash Athletic Club which was affiliated with the defendants.

The President of the Association heads the management committee. At all material times that office was occupied by Mr. Loh Lin Kok, a practising lawyer. The management committee included three vice presidents and an honorary secretary. The decision makers in the management committee were all volunteers from various walks of life interested in the promotion of sports in Singapore. At the material time Mr. Maurice Nicholas was one of the vice presidents in the management committee. Captain Selvarajah a regular officer in the Singapore Armed Forces was a member of the management committee.

Under its constitution the defendant Association had several standing and sub-Committees. The Selection and Training Committee was one such committee. In 1989 its chairman was Mr. Maurice Nicholas. Captain Selvarajah was the secretary of the Selection and Training Committee.

In August 1989 the South East Asian Games (the SEA Games) were scheduled to be held at Kuala Lumpur. The plaintiff was an aspirant to the gold medal for the 400 metres in the SEA Games. The final authority to select the participants for the SEA Games from Singapore was vested in the Olympic Council of Singapore. The power and responsibility of selection and submission of the names of the Singapore team to the Olympic Council however was in the hands of the defendants. The training and selection committee was in charge of scouting for talent to represent Singapore at the SEA Games. To this end the plaintiff was prospected.

The plaintiff, with primary six as his highest standard of education, was training intensively to qualify for the SEA Games. Major Lim Hong Kang a national coach and a regular officer in the Singapore Armed Forces, was attending to his training. Besides being a coach, Major Lim was also a friend and mentor of the plaintiff.

In March 1989 Mr. Maurice Nicholas decided that the plaintiff should be sent to Japan for three months on training with the view to recommending him to the Olympic Council for the SEA Games. Mr. Maurice Nicholas had secured the willingness of the Japan Amateur Athletic Federation (the Japanese Federation) to afford an opportunity to the plaintiff to train with Japanese athletes. The plaintiff was reluctant to accept the offer. He feared that conditions in Japan might not suit him because of cultural, religious and language barriers. He had earlier harboured hopes of training in the United States. In the end he was prevailed upon to go to Japan for a five week stint. He was told that Don Quarrie, an erstwhile Olympic champion sprinter, would be in Japan at the same time and by whose presence the plaintiff would benefit. The plaintiff was also advised that he would participate in competitions there. Being a Muslim the plaintiff was assured that arrangements had been made for *halal* meals.

The plaintiff left Singapore on 19 April 1989 for Japan. He had not been prior to his departure, apprised of any definite training programme that might have been arranged for his five week stint. The following day he arrived at Chukyo University near Nagoya. The plaintiff soon realised that Don Quarrie was not in Japan. He received no information of any programme that had been arranged for him. The promise that he would participate in competitions did not materialise. The coach assigned to him was occupied with other business. His fear that *halal* food would not be available was confirmed. He was discouraged by the lack of care and attention. Language problems further confounded his problems. He was asked to learn Japanese. In the circumstances it was clear to the plaintiff that cultural and other conditions were not conducive to any concentrated or useful training in Japan. He therefore decided to return to Singapore. His hosts were initially unprepared to release him without clearance from the defendants. An attempt was made to contact Mr. Maurice Nicholas but in vain. Thereafter he was permitted to leave. The plaintiff left Japan on 24 April 1989 and arrived at Singapore in the small hours of 25 April 1989. Later that morning he met with his coach, Major Lim and explained the cause for his early return to Singapore. On the same day the afternoon press, the *New Paper*, carried a report quoting the plaintiff in some detail on the circumstances of his early return to Singapore. It concluded with a statement by him that he would continue to train under his coach in Singapore for the SEA Games which were then four months away.

The *New Paper* of 25 April 1989 also reported that an investigation into the plaintiff's aborted training stint in Japan had been ordered by the defendants' president, Mr. Loh Lin Kok. He was plainly outraged by the plaintiff's early return.

Mr. Loh Lin Kok later told the press that the plaintiff's return was "an international fiasco" and that the plaintiff had "marred our good image with the Japanese". Other lines attributed to Mr. Loh Lin Kok clearly betokened that the plaintiff's participation in the Sea Games was at grave risk.

In the meantime at the behest of Mr. Loh Lin Kok a meeting was held at the office of Mr. Maurice Nicholas on 26 April 1991. It was attended by Major Lim, the plaintiff, Mr. Maurice Nicholas and Captain Selvarajah. At the meeting the plaintiff gave his reasons for his early return. Captain Selvarajah then asked the plaintiff to write two letters of apology: one to the President of the defendants the other to the Japanese Federation. He agreed. Mr. Maurice Nicholas asked the plaintiff and Major Lim not to speak to the press. They agreed. Later the same day the plaintiff signed the letters of apology which were handed to Captain Selvarajah.

The letters had been composed by Major Lim as the plaintiff was not fluent in English. Both the plaintiff and Major Lim believed that the matter would end there. Major Lim believed that punishment if any would be minimal. The plaintiff and Major Lim firmly believed that the plaintiff would be allowed to run at the SEA Games. Their belief was induced by what Captain Selvarajah had stated at the meeting.

A month later the plaintiff received a letter from the defendants stating that a disciplinary committee had been constituted to inquire into the plaintiff's premature departure from Japan. The letter required the plaintiff to "appear in person to answer to the allegations against him". It stated that the plaintiff would be given "every opportunity to speak and answer to the allegations against him". It also required him to respond with an exculpatory statement within 10 days. The letter was signed by Captain Selvarajah as secretary of the disciplinary committee. The following charge was enclosed with the letter.

> You,
>
> Haron Mundir,
>
> are charged with committing misbehaviour in that you on or about 24 April 1989, did return to Singapore from your training *cum* competition stint in Japan prematurely and without the permission from the Singapore Amateur Athletic Association when you were supposed to be in Japan for the training *cum* competition stint from 19 April 1989 to 23 May 1989 and you have thereby committed an offence punishable under r. 13(i) of the Constitution of the Singapore Amateur Athletic Association.

The plaintiff appeared before the disciplinary committee on 11 June 1989 without a legal Counsel or a McKenzie friend to represent or assist him. When the inquiry commenced Captain Selvarajah who was to function as secretary of the disciplinary committee assumed the role of "prosecutor" and led Mr. Maurice Nicholas in evidence against the plaintiff. The evidence was an elaboration of a written statement Mr. Maurice Nicholas had made much earlier. The record of proceedings before the disciplinary committee showed that Captain Selvarajah did much of the talking. The plaintiff claimed that he was not given a copy of the written statement.

Although Captain Selvarajah had assured the plaintiff that he would be given an opportunity to cross-examine Mr. Maurice Nicholas such opportunity was never in fact afforded. After Mr. Maurice Nicholas had finished, Captain Selvarajah began an interrogation of the plaintiff during which he gave the plaintiff a good dressing down. Captain Selvarajah had experience in the army as a provost officer. It was apparent that he had acquired the skills of a sharp interrogator. The plaintiff stated twice that he was hungry and asked to be released. The proceedings ended at about 10.30 p.m.

The disciplinary committee signed a fairly lengthy report on the same day. It began with a statement that the case presented several problems which precluded lenient judgment against the plaintiff. It ended by recommending that the plaintiff be suspended from active competition for two years.

The report was in highfalutin language. It referred to matters which were not formally placed before the disciplinary committee with sufficient notice or any notice to the plaintiff. In particular it referred to the plaintiff's trip to Taiwan in 1988.

By a letter dated 15 June 1989 the plaintiff was given notice of a management committee meeting to be held on 22 June 1989. He was invited to attend not for the purpose of being heard in his defence or mitigation but to receive the verdict of the management committee.

The report of the disciplinary committee was not extended to the plaintiff. Clearly it was not intended that the plaintiff should be given sight of the findings. It was manifest that the decision of the management committee would be made without hearing the plaintiff.

On 22 June 1989 the management committee met and decided to suspend the plaintiff from all forms of track and field activities in and outside Singapore for a term of 18 months from the same day.

On 5 July 1989 the plaintiff instituted this action claiming the following private law remedies.

(a) A declaration that the decision of the disciplinary committee accepted at the management committee meeting held on 22 June 1989 to suspend the plaintiff was null and void.

(b) An injunction to restrain the defendants from acting on the decision or excluding or suspending the plaintiff from participating in any track and field activities in or outside Singapore until after the trial of this action or until further order.

(c) Damages.

On the same day on an *ex-parte* application an interlocutory injunction was granted by Rajah J in the following terms:

An injunction to restrain the defendants whether by themselves or by their servants or otherwise howsoever from doing the following acts or any of them that is to say, acting on the decision or excluding or suspending the plaintiff from participating in any track and field activities, be it competitions or otherwise, in or outside Singapore until after the hearing of a motion returnable on Friday, 14 July 1989, at 10.30 a.m. or until further order.

On 7 August 1989 after an *inter partes* hearing Chan Sek Keong J ordered that the injunction granted *ex-parte* be continued until after the trial.

The Issues

At the trial the defendants did not challenge the jurisdiction of this Court to determine the validity of the decision made by the defendants. They contended that such jurisdiction of the Court to try this case is founded on the supervisory function of the Courts. If that contention is correct this Court would be subjected to all the limitations of the supervisory power including the inability to award damages. Authorities do not support the defendants' contention. The law makes a distinction between private law liability and public law illegality. The following is a lucid statement of the distinction between the two regimes: *An Introduction to Administrative Law* by Peter Cane (1985) at p. 40:

> Just as public law illegality does not entail private law liability, so also private law liability does not necessarily involve public law illegality. For example, a breach of contract by a public authority might not fall under any of the recognised heads of public law illegality. One of the most important consequences of this gulf between public law illegality and private law liability can be seen in the law of remedies. The remedies developed by the Courts for use in public law perform three functions: the "quashing" (that is, the invalidation) of administrative decisions; the prohibition of administrative action; and the ordering of authorities to perform duties. The common law remedy of damages is a private law remedy for private law wrongs. Unless the victim of public law illegality can also show that the authority's action amounts to a private law wrong he will not be entitled, at common law, to monetary compensation.
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> The public law activities of public bodies are subject to scrutiny and control by the High Court in the exercise of what is called its "supervisory" jurisdiction. Under this jurisdiction (which is "inherent", that is, the product of common law rather than statute) the High Court has power to "review" the activities of public authorities and, in some cases, of private bodies

> exercising functions of public importance such as licensing. To be contrasted with the supervisory jurisdiction is the Court's appellate jurisdiction. The common law never developed mechanisms for appeals as we understand them today, and all appellate powers are statutory.

The expression "supervisory jurisdiction" is a term of art. It is the inherent power of the Superior Courts to review the proceedings and decisions of inferior Courts and tribunals or other public bodies discharging public functions. The defendants are not a public body. In its true character it is a private organisation very much like a limited company. As such they do not come under the purview of the supervisory jurisdiction of the superior Courts.

The true nature of the plaintiff's cause of action is breach of contract. In some instances the jurisdiction of the Court over similar cases may be founded on the law of property. That would be the case of a members club supported by contributions and subscriptions. It has no application to a private organisation like the defendant Association. Contract is the correct basis of the jurisdiction. The contract may be express or implied. In many instances the term of contract would be ascertained or implied from the constitution or the rules of the association.

As Lynskey J said in *Baker v. Jones* [1954] 2 AER 553 at 558-9 the defendant Association is:

> an unincorporated association. It has no legal entity. The relationship between its members is contractual. That contract is contained in, or to be implied from, the rules. The Courts must consider such a contract as they would consider any other contract. Although parties to a contract may, in general, make any contract they like, there are certain limitations imposed by public policy, and one of those limitations may be that parties cannot, by contract, oust the ordinary Courts from their jurisdiction: *Scott v. Avery*. The parties can, of course, make a tribunal or Council the final arbiter on questions of fact. They can leave questions of law to the decision of a tribunal, but they cannot make it the final arbiter on questions of law. They cannot prevent decisions being examined by the Courts.

In this case the contract between the plaintiff and the defendant Association must be implied. It came into being when the plaintiff accepted the defendants' offer to go to Japan for training. The contract was confirmed when the defendants pursuant to their power under r. 13 of their constitution exercised the disciplinary powers over the plaintiff and the plaintiff submitted to such jurisdiction. The contract may also be implied on the basis that Flash Athletic Club was the plaintiff's agent.

The present proceedings therefore are neither an appeal nor an application for judicial review. This is an action for breach of contract. The pleadings may not spell out the cause of action for breach of contract in the traditional way. They do however set out sufficient facts to found an action in contract. Although the parties are bound by their pleadings:

> Yet the Court is not bound by the pleadings of parties and must proceed upon the evidence which it deems to be most accurate and trustworthy per Lord Normand in *The Geo W. McKnight* [1947] 8 LL. LR 419 at 423.

The device used by the Courts to determine cases of expulsion or suspension of members in an incorporated association is by the application of the doctrine of natural justice. The rules of natural justice are implied into every contract express or implied which contemplates a hearing affecting the rights and livelihood of persons. The rules are so implied as a matter of law and public policy: *Lee v. The Showmen's Guild of Great Britain* [1952] 2 QB 329, *Lawlor v. Union of Post Office Workers* [1965] Ch 712, *Russell v. Duke of Norfolk* [1949] 1 AER 109.

The observance of the rules of natural justice is an essential condition to the exercise of the penal power of the defendants over the plaintiff. Further if suspended by the defendants the Courts will intervene if it is shown that such suspension was spurred by bad faith. If the disciplinary action is sought to be justified on one ground but is in fact motivated by other extraneous considerations, such action would be in bad faith: *Dawkins v. Antrobus* [1879] 17 Ch D 615 and *D'Arcy v. Adamson* [1913] 29 TLR 367.

The primary complaint that the plaintiff makes against the defendants is that they failed to comply with the rules of natural justice. It is necessary to turn to public law cases to understand the concepts of natural justice. As stated by Lord Loveburn L.C. in *Board of Education v. Rice* [1911] AC 179 at 182:

> Any person discharging the duty of deciding or determining questions must act in good faith and fairly listen to both sides, for that is a duty lying upon any one who decides any thing.

In its application the doctrine of natural justice has undergone such a metamorphosis that its meaning depends on the circumstances of the case. In a recent case, *Council of Civil Service Unions v. Minister for the Civil Service* [1985] 1 AC 374 at 414, Lord Roskill commented:

> The use of the phrase "principles of natural justice" is no doubt hallowed by time and much judicial repetition, but it is a phrase often widely misunderstood and therefore as often misused. That phrase perhaps might now be allowed to find a permanent resting place and be better replaced by speaking of a duty to act fairly. But that latter phrase must not in its turn be misunderstood or misused. It is not for the Courts to determine whether a particular policy or particular decisions taken in fulfilment of that policy are fair. They are only concerned with the manner in which those decisions have been taken and the extent of the duty to act fairly will vary greatly from case to case as indeed the decided cases since 1950 consistently show. Many features will come into play including the nature of the decision and the relationship of those involved on either side before the decision was taken.

A widely used textbook, with a fundamental grasp of the subject matter, *Constitutional and Administrative Law*, 6th Edn., at 557-8, summarises the doctrine in the following words:

The rules of natural justice are minimum standards of fair decision-making, imposed by the common law on persons or bodies who are under a duty to "act judicially". They were applied originally to Courts of justice and now extend to any person or body deciding issues affecting the right or interests of individuals where a reasonable citizen would have a legitimate expectation that the decision-making process would be subject to some rules of fair procedure. The content of natural justice is therefore flexible and variable. All that is fundamentally demanded of the decision-maker is that his decision in its own context be made with due regard for the affected parties' interests and accordingly be reached without bias and after giving the party or parties a chance to put his or their case. Nevertheless some Judges now prefer to speak of a duty to act fairly rather than a duty to observe the rules of natural justice. Often the terms are interchangeable. But it is perhaps now the case that while a duty to act fairly is incumbent on every decision-maker within the administrative process whose decision will affect individual interests, the rules of natural justice apply only when some sort of definite code of procedure must be adopted, however flexible that code may be and however much the decision-maker is said to be master of his own procedure.

Perhaps the most practical guidance for application of the rule is given by *Atkins Court Forms*, 2nd Edn., Vol. 40 at 136:

> There is no precise definition of this term, natural justice, which relies upon what a reasonable man instinctively regards as being fair and just.

Application of the Principles

When the facts of the case are analysed this case is a storm in a tea cup. The complaint against the plaintiff was that he returned from Japan prematurely without approval of the defendants. The evidence of the plaintiff clearly established that in view of what happened and what did not happen in Japan his return to Singapore was a trivial incident. The defendants resorted to absolute standards to Judge the conduct of the plaintiff. The plaintiff's failure to obtain permission at its worst was a technical breach especially in view of the fact that an attempt had in fact been made to contact Singapore. The plaintiff apologised as he was asked to. The plaintiff and Major Lim were led to believe by Captain Selvarajah that the apology to the President of the defendant association and the Japanese Federation would put an end to the episode.

The reason why Mr. Loh Lin Kok became so steamed-up and resorted to extreme measures against the plaintiff is not easy to perceive. A plausible explanation is that there were external factors one of which was the personality of Mr. Loh Lin Kok. This was clearly augured by his description of the episode as an "international fiasco". But the Japanese Federation made no complaint against the plaintiff. Mr. Loh Lin Kok used equally extreme language whenever he spoke about the plaintiff at the management committee meeting. These matters have no direct relevance to the question before me. They are however useful in comprehending the course of events leading to the suspension of the plaintiff and the manner in which Mr. Loh Lin Kok chose to ignore judicial orders made by Rajah J and Chan J.

Having reviewed the facts proved by oral evidence and documents, I have come to the irresistible conclusion that injustice was done to the plaintiff. Justice was denied to him because the defendants did not act in good faith in the way in which the plaintiff was treated and the manner in which the defendants conducted themselves throughout the disciplinary proceedings against him and found him guilty. In coming to this conclusion I advisedly took care to ensure that it was not the decision of the disciplinary committee or management committee but the decision making process that must be examined by me. Hence the real question for determination is: Did the defendant proffer procedural justice to the plaintiff?

The best approach to determine the question is to examine the conduct of Captain Selvarajah. It was he who summoned the meeting and extracted the letters of apology by inducing the plaintiff and Major Lim to believe that the plaintiff would be let off lightly. There can be no doubt that the plaintiff and Major Lim were inveigled into that belief because Captain Selvarajah who was a member of the management committee as well as the secretary of the training and selection committee presented himself as a peacemaker. There was no evidence that he did in fact intercede on behalf of the plaintiff as a peacemaker. He then reared his head in the fashion of a criminal prosecutor. He framed the charge against the plaintiff. He wrote the letter asking for an exculpatory statement. He said in evidence that the plaintiff's IQ was very low. But he never took this into consideration in deciding whether the plaintiff was fit to make an exculpatory statement or to defend himself in person or to assign or advise him to retain a legal Counsel.

At the hearing before the disciplinary committee he played the role of giving evidence in the guise of presenting the evidence of Mr. Maurice Nicholas. Then he interrogated the plaintiff and treated him harshly. I am satisfied that the plaintiff was utterly dazed by the whole affair and that he did not fully comprehend what was going on until he engaged a lawyer to protect his interests.

Then came the gravamen of injustice. When Captain Selvarajah gave evidence in Court it appeared to me that it was he who prepared the disciplinary committee's report. I questioned him on this. Initially he insisted that it was the work of the disciplinary committee. Later, having realised that the truth would emerge, he admitted to having authored the report. He lied in the witness box. He and Mr. Loh Lin Yow, the chairman of the disciplinary committee, said in evidence that he was told what to write and that he wrote it out after the hearing on the same day. (Mr. Loh Lin Yow must not be confused with Mr. Loh Lin Kok. They are first cousins.) I did not believe them. "A confessed liar cannot usually be accepted as credible" per Denning LJ in *Ladd v. Marshall* [1954) 1 AER 745 at 748. The probability was that Captain Selvarajah had drafted it in advance. He did not have sufficient time to prepare the lengthy report in time after the hearing while the committee waited for him to prepare it. The disciplinary committee completed its hearing at about 10.30 p.m. and it was said to have been signed by the committee members on the same day. Where did he get the notes of evidence to work on the report? He said he took them down as evidence was given. Asked to produce the notes he had taken down he said he destroyed them. I did not believe him. Hence my conclusion is that the findings were not made by the disciplinary committee. The disciplinary committee patently consisted of three stooges. The so-called hearing given to the plaintiff and the purported findings of the disciplinary committee were cruel and farcical.

Major Lim said in evidence that he was shocked to learn that Captain Selvarajah had used the letters of apology against the plaintiff which he had obtained by representing that he would mediate on behalf of the plaintiff. Major Lim impressed me as a truthful witness and an honourable person.

The disciplinary committee report and Mr. Loh Lin Kok at the subsequent management committee meeting made reference to the plaintiff's trip to Taiwan in 1988. What in fact happened was that the plaintiff was sent to Taiwan where he was taken ill and he returned. It was not even a minor misdemeanour. Mr. Loh Lin Kok and Captain Selvarajah for the purposes of punishing the plaintiff treated it as an unpardonable misdeed as they did his trip to Japan. This was sufficient justification for them to project the plaintiff as a bad boy of sports. The plaintiff was in fact voted the model sportsman at the SEA Games at Kuala Lumpur. Their conduct, it must be inferred from all the circumstances, was motivated by other external considerations working in the minds of Mr. Lok Lin Kok and Captain Selvarajah or that they had harboured a pathological aversion for the plaintiff.

During the trial it was indicated several times that Mr. Loh Lin Kok would be called to give evidence. On the basis of the indication certain relevant questions were not put to other witnesses. Eventually he was not called. Mr. Loh Lin Kok was the alter ego of the defendants. He was an active player in the episode from beginning to end. Very serious charges were made against him and the Association. As its president it was his responsibility to defend his Association. There can be no power without responsibility. Mr. Loh Lin Kok obviously viewed the matter differently. The result is that I must make an adverse inference against him that his conduct towards the plaintiff amounted to malice. His animosity against the plaintiff continued even after the plaintiff had obtained the interlocutory injunction from Rajah J and confirmed by Chan J. Mr. Loh Lin Kok treated the Court order with insouciance or perhaps contempt. The plaintiff was excluded from sports events in Singapore and outside Singapore without any reasonable justification.

Plaintiff's Claim

Where a decision has been arrived at without adherence to the rules of natural justice or good faith the private law declaratory is available to condemn the decision. Further as in any contract case damages may be awarded for breach of the implied term to afford a fair hearing. But such damages are special damages and must necessarily be pleaded and proved.

Bonsor v. Musicians' Union [1956] AC 104 is the leading case in point. The plaintiff a member of the Musicians' Union, was in arrears of his subscriptions. By reason of this the secretary of the Union struck his name off the register and he was excluded from membership and all its attendant privileges. The exclusion was not in accordance with the relevant rule of the union which conferred the power to exclude a member not on the secretary but the branch committee or meeting. The plaintiff brought the proceedings against the union claiming a declaration, damages and costs. The trial Judge and the Court of Appeal granted the declaration but refused to award damages. On appeal the House of Lords held that the plaintiff was entitled to all the remedies appropriate to a breach of contract including damages. There was a contract in the form of the rules of the union which included a rule dealing with the procedure for exclusion of a member. The union impliedly had agreed that a member would not be excluded by the union otherwise than in accordance with the rules. The union broke the contract and accordingly was liable in damages for wrongful expulsion. The House of Lords in the circumstances remitted the case for proof of **special damages,** if any, for the wrongful expulsion.

In *Chong Koh Lim & Ors. v. Yong Su Hian* [1979] 2 MLJ 11 the plaintiff, Yang Su Hian brought an action to have his expulsion from the Perak Chinese Association declared null and void. He also sought damages. The declaration he sought was granted on the ground that the rules of fair hearing were not observed - no adequate notice and hearing had been given and there had been no due inquiry in respect of the allegation against the plaintiff. The trial Judge dismissed the claim for damages. The Federal Court of Malaysia confirmed the decision. *Bonsor's* case was not cited in any of the report of the case. The basis for the claim for damages is not apparent from the judgments. There was a specific finding that there was no bad faith on the part of the defendants. Abdolcader J in the Federal Court stated that the claim for damages was for "wrongful expulsion and not defamation". He went on to hold that although the plaintiff's expulsion was invalid he had not suffered such damage as to merit a reversal of the trial Judge's decision of denying him damages. Syed Othman FJ said:

> It was not shown that the respondent suffered any loss in proprietary interest or means of livelihood as a result of being deprived of the associations's membership. Nor was it shown that his reputation was in any way affected.

The point as to whether **general damages** can be awarded where a decision to expel is declared to be invalid for non-adherence to the rules of fair hearing was not considered and accordingly this case is not of much guidance.

In *Florence Baites v. Ng Jit Leng* [1985] 1 MLJ 374 the plaintiff was a member of the Penang Club paying a subscription. The defendant was the president of the club. She brought the action seeking a declaration that her suspension by the club was null and void and for an injunction, damages and costs. It was held that the suspension was bad for non-observance of the rules of natural justice. It was also held that the plaintiff was entitled to damages for the "wrong done to her". Ajaib Singh J said:

> There is nothing in law to preclude the awarding of damages for wrongful suspension or expulsion from a member's club.

He awarded RM10,000 for the embarrassment, distress and humiliation which the plaintiff had suffered as a result of the suspension. He relied on the *Bonsor* case. The damages he awarded were general and not special damages.

In the case before me the only special damages which was pleaded and proved was for $1,500 which amount he would have received from the defendants for winning medals had he not been suspended. He is clearly entitled to judgment for that amount. The plaintiff also claims general damages for emotional damage, mental anguish, humiliation and reputation. These are unquestionably recognised heads of damage in the regime of tort. In the realm of contract general damages for physical injury may be awarded in cases of breach of contract for sale of goods: see *Wren v. Holt* [1903] 1 KB 610 where injury was caused by beer containing arsenic; *Godley v. Perry* [1960] 1 WLR 9 where injury was caused by a defective catapult. As a result of *Donoghue v. Stevenson* [1932] AC 562 the same facts would now also give rise to either concurrent or alternative liability in tort. However, as a general rule damages for frustration, injured feeling, mental distress, humiliation and loss of reputation will not as a rule be awarded for breach of contract: *Bliss v. South East Thames Regional Health Authority* [1987] 1CR. 701. In *Addis v. Gramophone Co. Ltd.* [1909] AC 488 the House of Lords regarded the general rule as too inveterate to be altered even if it were desirable. *Addis* was a wrongful dismissal case. In that case Lord Atkinson stated at 495:

> There are three well known exceptions to the general rule applicable to the measure of damages for breach of contract, namely, actions against a banker for refusing to pay a customer's cheque when he has in his hands funds of the customer's to meet it, actions for breach of promise of marriage, and actions like that in *Flureau v. Thornhill* where the vendor of real estate, without any fault on his part, fails to make title. I know of none other.

In recent times one further exception has been established where the contract is to provide comfort, peace of mind or freedom from distress and it is breached: see *Jarvis v. Swan Tours Ltd.* [1973] QB 233 and *Jackson v. Horizon Holidays Ltd.* [1975] 1 WLR 1468 failure to provide a comfortable holiday; *Perry v. Sidney Phillips & Sons* [1982] 1 WLR 1297 failure by surveyor to detect certain physical defects in a house and other sources of distress and inconvenience including a leaking roof and a septic tank with an offensive smell.

In view of the foregoing the Penang Club case must be regarded as a case no more than a decision on the facts of the case. It may be rationalised on the basis that the Club was to provide mental and emotional comfort to the plaintiff. It cannot however be regarded as a case establishing any general principle or as a new exception to the general rule outlined above.

The basis for refusing general damages in cases such as this is that the test of remoteness in contract is different from tort. Further a pure breach of contract cannot be converted into a tort in order to recover damages otherwise not recoverable. The law stated above does not justify an award of general damages claimed by the plaintiff and he is not entitled to them.

The Malice Factor

It is part of plaintiff's case that the defendants acted with malice. Is malice a relevant factor? It is certainly a factor to be taken into account in assessing the validity of the decision and the decision making process. In contract cases the law as it stands does not permit malice to be taken into consideration in awarding damages. It would be otherwise if the claim is founded on tort.

The object of awarding damages in contract is different from tort. The underlying logic for the difference is that the law of contract is concerned with a defendant's failure to improve the claimant's position by his failure to keep a promise. In contract the loss is monetary and being measurable in terms of money and therefore special. The law of tort on the other hand is concerned with the plaintiff's position made worse by a wrongdoing of the defendant. The damage is in the main non economic and being immeasurable is general. Damages must be assessed. As shown above, except in certain peculiar or exceptional circumstances mentioned above, general damages for physical and moral injury are not recoverable in contract unless the same facts give rise to a claim in tort.

Does malice by itself give rise to a tort? In *Addis v. Gramophone Co. Ltd.* Lord Atkinson said:

> In many ... cases of breach of contract there may be circumstances of **malice**, fraud, defamation or violence, which would sustain an action of tort as an alternative remedy to an action for breach of contract. If one should select the former mode of redress, (that is, tort) he may, no doubt, recover exemplary damages, or what is sometimes styled as vindictive damages; but if he should choose to seek redress in the form of an action for breach of contract, he lets in all the consequences of that form of action.
>
> (Emphasis added)

Later in *Abbott v. Sullivan* [1952] 1 KB 189 Morris LJ said at 217:

> Very different considerations would have arisen if they had acted **maliciously** or if the ingredients of an actionable conspiracy had been present.
>
> (Emphasis added)

The suggestion is that acting with malice where the act is otherwise lawful may give rise to a cause of action in tort.

In *Abbott v. Sullivan* malice and bad faith had been pleaded. But the finding was that malice was not proved. This case therefore cannot be authority to found a cause of action on malice alone. But it is a long established legal rule in that an act of an individual which is not in itself unlawful cannot give rise to a cause of action in tort merely because it is motivated by malice: *Bradford v. Pickles* [1895] AC 597 and *Allen v. Flood* [1898] AC l. And *Addis v. Gramophone Co. Ltd.* drove the last nail into the coffin on the point when it decided that breach of contract is not an unlawful act by which a claim in contract can be converted into a claim in tort because the breach of contract is motivated by malice. The reason is simple. A contractual obligation is a duty *in personam.* And a duty in the law of tort is a duty *in rem* in that it is owed to the world at large and is imposed by law. A claim in tort must be founded on a breach of duty recognised by the law of tort. Hence a mere breach of a duty in contract cannot lead to a tort.

The conclusion is that the malice factor does not afford a ground to award any form of damages in contract or tort.

For these reasons I grant:

(a) A declaration that the decision purported to have been accepted at the management committee meeting held on 22 June 1989 to suspend the plaintiff was null and void;

(b) An injunction restraining the defendants whether by themselves or by their servants or otherwise howsoever from acting on the decision or excluding or suspending the plaintiff from participating in any track and field activities, be they competitions or otherwise, in and outside Singapore;

(c) Special damages in the sum of $1,500;

(d) Defendants to pay full costs of interlocutory application for injunction. Defendants to pay 75% of taxed costs of trial.

Also found at [1992] 1 CLJ 284